

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LYNN TILTON, et al.,

Plaintiffs,

v.

SECURITIES AND EXCHANGE
COMMISSION,

Defendant.

USDC-SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:

DATE FILED: OCT 14 2016

Case No. 16-cv-7048

**NOTICE OF VOLUNTARY DISMISSAL PURSUANT TO
FEDERAL RULE OF CIVIL PROCEDURE 41(a)(1)(A)(i)**

Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i), Plaintiffs Lynn Tilton; Patriarch Partners, LLC; Patriarch Partners VIII, LLC; Patriarch Partners XIV, LLC; and Patriarch Partners XV, LLC (collectively, “Plaintiffs”) hereby give notice that the above-captioned action against the Securities and Exchange Commission (“SEC” or “Defendant”) is voluntarily dismissed without prejudice.

As this Court is aware, after Plaintiffs filed their Complaint in this action—but before Defendant even entered an appearance—the action was reassigned to this Court, which ordered *sua sponte* that Plaintiffs submit a letter within seven days, and not exceeding five pages, explaining why their due process and equal protection claims are not barred by the Second Circuit’s decision in *Tilton v. SEC*, 824 F.3d 276, 279 (2d Cir. 2016). Docket Entry (“D.E.”) 8. On September 27, 2016, Plaintiffs submitted that letter, explaining that this Court has jurisdiction over their equal protection claim under *Gupta v. SEC*, 796 F. Supp. 2d 503, 513 (S.D.N.Y. 2011) (Rakoff, J.), and over their due process “pattern and practice” claim under *McNary v. Haitian Refugee Center, Inc.*, 489 U.S. 479, 483-84 (1991), and similar cases. D.E. 13. On October 4,

2016, the SEC filed an opposition letter, arguing that this Court lacks jurisdiction under *Tilton*, 824 F.3d 276. D.E. 15. Two days later, on October 6, 2016, in response to Plaintiffs' request that the Court let the case go forward and permit full briefing, instead of ruling on the issue of subject matter jurisdiction based solely on five-page summary letters, this Court issued a second order directing the parties to "meet and confer" as to how the question of jurisdiction should be resolved and to submit a joint letter informing the Court of their recommendation by today, October 13, 2016. D.E. 16.

Plaintiffs' counsel conferred with the SEC's counsel on October 7, 2016. Although Plaintiffs' counsel proposed expedited briefing on the question of subject matter jurisdiction, the SEC's counsel insisted that either no further briefing was necessary or that the SEC would move to dismiss Plaintiffs' Complaint (D.E. 1) in the normal course under Federal Rule of Civil Procedure 12(b)(1).

In light of the foregoing and the imminence of the upcoming SEC enforcement hearing against Plaintiffs before an SEC administrative law judge commencing on October 24, 2016, Plaintiffs have not pursued the injunctive relief originally contemplated in the Complaint and, therefore, have decided to voluntarily dismiss this action without prejudice. Per Federal Rule of Civil Procedure 41, no further Court order is required.

Dated: New York, New York
October 13, 2016

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SO ORDERED:



U.S.D.J.
(0-14-16)

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of October, 2016, I caused the foregoing Notice of Voluntary Dismissal Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) to be filed with the Clerk of Court for the U.S. District Court for the Southern District of New York via the Court's CM/ECF system. I further certify that service was accomplished on all parties via the Court's CM/ECF system.

s/ Randy M. Mastro

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